

**FILED**

**JUL 27 2017**

Clerk, U.S. District Court  
District Of Montana  
Billings

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JOSE ANGEL TORRES-GUARDADO,

Defendant/Movant.

Cause No. CR 07-22-BLG-SPW

ORDER

On July 24, 2017, Defendant Torres-Guardado, acting *pro se*, moved the Court to “correct” the presentence report to reflect that two prior convictions are not “crimes of violence” in the wake of *Johnson v. United States*, \_\_ U.S. \_\_, 135 S. Ct. 2551 (2015). Torres refers to the Ninth Circuit’s ruling permitting him to file a second or successive motion under 28 U.S.C. § 2255. *See* Mot. to Correct (Doc. 101) at 1; Order (Doc. 95).

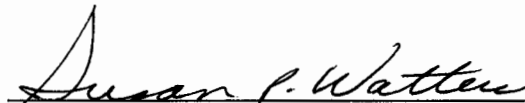
For two reasons, the motion to correct is denied. First, after the Ninth Circuit made its ruling, the United States Supreme Court held that the advisory Sentencing Guidelines are not subject to due process challenges. As a result, *Johnson*, which concerned a due process challenge to a federal statute, does not apply to the Sentencing Guidelines. *See Beckles v. United States*, \_\_ U.S. \_\_, 137 S. Ct. 886, 890 (2017).

Second, the correct legal characterization of Torres's prior offenses is not essential to the Bureau of Prisons' placement decisions. The Bureau may consider the conduct reportedly underlying any of Torres's prior offenses in determining his appropriate placement within the prison or in pre-release programs. *See* 18 U.S.C. § 3621(b).

Correction of the report is not warranted.

Accordingly, IT IS HEREBY ORDERED that Torres-Guardado's motion to correct the presentence report (Doc. 101) is DENIED.

DATED this 26<sup>th</sup> day of July, 2017.

  
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Susan P. Watters  
United States District Court